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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re

HECTOR ROSALES

on Habeas Corpus.

B205281

(Los Angeles County
Super. Ct. Nos. BH004922, VA014658)

ORIGINAL PROCEEDING; petition for a writ of habeas corpus, Steven R.
Van Sicklen, Judge. Petition granted.

Linda Buchalter for Petitioner.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Jennifer A. Neill and
Charles Chung, Deputy Attorneys General, for Respondent.

In 1992, Hector Rosales was sentenced to a term of 15 years to life for second degree murder. In 2007, at his fifth subsequent parole suitability hearing, the Board of Parole Hearings (Board) found Rosales unsuitable for parole. Rosales filed a petition for a writ of habeas corpus contending that he has been denied due process because no evidence supports the Board's finding that he would pose an unreasonable risk of danger to public safety if released on parole. We agree and grant the petition.

FACTUAL AND PROCEDURAL HISTORY

A. Commitment Offense

As set forth during the hearing, on April 16, 1992, the Huntington Park Police Department responded to a report of a traffic collision and found the victim, Garcia, slumped over the seat, bleeding profusely. The victim was transported to the hospital and received emergency treatment, but died early the next morning.

Witnesses at the scene told the police that Rosales, then 18, was involved in the altercation. Witnesses said that one of the subjects attacked the victim's car with a baseball bat, and the other subject fired through the rear window of the car, hitting the victim. Rosales was identified as the shooter.¹

Rosales pleaded nolo contendere to second degree murder and was sentenced as stated at the outset.

¹ According to Rosales's version, he was with a group of young men who were supposed to "meet with a group of guys to have it out with them," but "they didn't show." Rosales's group got in their car and while driving through one of the small streets near the park, spotted the rivals. Rosales's group parked and got out of the car and told the rivals to get out of their car so they could "settle this." Yelling ensued, and the victim tried to run over one of Rosales's associates. Another one of Rosales's group broke the victim's back window. As the victim tried to speed away, Rosales pulled out a gun and tried to shoot the car's tires. He ended up hitting the victim, who then crashed the car.

B. Social History

Rosales was born on October 7, 1973, and was raised by both his parents until he was about five years old, when his parents divorced. His mother remarried in 1986. Rosales lived with his mother and stepfather, with whom he had a very good relationship. His relationship with his birth father was more troubled due to the senior Rosales's heavy drinking and verbal and physical abuse of Hector's mother. Rosales has one biological brother, one half brother, and one half sister.

By the time Rosales was a teenager, he started staying out late and "drifted into gang involvement." When the family moved to Huntington Park, he "chose the wrong people to hang around with to try to fit in." He had a history of truancy and delinquency in school, including fighting, and ultimately dropped out in the 11th grade. He decided to work with his stepfather and to attend night school. He stated that he still hung around with his fellow gang members, "trying to play both sides."

His juvenile criminal record consists of petty theft in February 1990 and burglary in September 1991. In both cases, he was released to a parent or guardian.

Rosales denies having any history of drug or alcohol abuse and says he experimented only twice when he was 18 years old.

Prior to his incarceration, Rosales worked as a cook for McDonald's for eight months in 1990. In 1992, he worked for a period as a molder and caster, then inspector and delivery man for Pyrocasting Corporation.

Rosales is single and has no children. He is close to his family and has received many phone calls, letters, and visits from a female friend, uncles, aunts, cousins, nieces, nephews, sister, brothers, mother, and stepfather. "Over the past five years he has had over seventy-five visits from all of the above."

C. Prison Record

Rosales was received at the Department of Corrections (now the Department of Corrections and Rehabilitation (CDC or CDCR)) in 1992. His classification score² is 19 (the lowest for a life term inmate), and his custody level is Medium A.³ His disciplinary record includes two “CDC 115” rule violations.⁴ The second CDC 115 occurred in 2003

² “‘Prisoner classification scores play a significant role in determining where, within the state’s many prison facilities, a prisoner will be sent to serve [his] term of incarceration. [Citation.] As a general rule, a prisoner’s classification score is directly proportional to the level of security needed to house the inmate. . . .’ . . . [¶] When a male inmate is first received in the prison system, he is housed at a reception center where his case factors are evaluated (i.e., length of sentence, criminal history, behavior during prior and current terms, including escape history) and a standardized system is used to compute a classification score to determine his initial placement in one of the state’s prisons or camps. (See [Cal. Code Regs., tit. 15,] §§ 3375.1–3375.3, subd. (a).) The score is recalculated at least yearly and may determine the necessity of subsequent prison transfers. ([*Id.*,] § 3375.4.)” (*In re Player* (2007) 146 Cal.App.4th 813, 823–824.) The mandatory minimum score for a life term inmate is 19. (CDCR, Department Operations Manual (DOM) (electronic ed. Dec. 31, 2006) Adult Parole Operations, § 61010.11.5, pp. 465–466, http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/Ch_6_Printed_Final_DOM.pdf [as of May 15, 2009].) Scores of 52 and above require the highest level of security (level IV). (Cal. Code Regs., tit. 15, §3375.1, subd. (a)(4).)

³ The CDCR “uses . . . inmate custody designations to establish where an inmate shall be housed and assigned, and the level of staff supervision required to ensure institutional security and public safety.” (Cal. Code Regs., tit. 15, § 3377.1, subd. (a).) At the Medium A custody level, inmates are housed in cells or dormitories within the facility security perimeter; their assignments and activities must be within the facility security perimeter; and their supervision must be “frequent and direct.” (*Id.*, subd. (a)(6)(A)–(C).)

⁴ A CDC 115 documents misconduct believed to be a violation of law or otherwise not minor in nature. (See Cal. Code Regs., tit. 15, § 3312, subd. (a)(3); *In re Gray* (2007) 151 Cal.App.4th 379, 389.)

and was for failing to obey a direct order that he come out of his cell.⁵ In that incident, the prison had been on lockdown, and inmates were being escorted from their cells to be interviewed. Rosales told the officer he did not know anything and could not (would not) go. When asked at the hearing about his decision to disobey the order, Rosales explained that he felt “stuck between a rock and a hard place” because complying with the order would likely have resulted in a fight between Rosales and the inmates who had threatened him, which would have led, in turn, to time in Administrative Segregation and the attendant risk of even more violence. He knew that his disobedience would cost him a CDC 115, but felt he *avoided* physical violence by refusing to leave his cell. Rosales also received one “CDC 128-A” counseling chrono⁶ in 1998 for contraband (too much linen in his cell).

Since he has been in prison, Rosales has completed a number of educational courses and programs. He earned his GED and completed a vocational graphic arts program. He received a certificate of achievement in vocational drafting, although he has not completed the program. He also completed four classes through Coastline Community College. He expressed an interest in continuing to upgrade his education to obtain an entry-level business certificate.

Rosales has held several jobs while in prison, including porter (1995), clerk (1997), tool man (1998–2001), and graphic arts (2001). In addition, he was an education clerk (2002–2004), worked in the kitchen as a “linebacker,” and in 2005 was a porter on B yard, his present position.⁷

⁵ The other CDC 115 was for a “falsified soft shoe chrono.” Evidently, Rosales wanted to wear his tennis shoes to a visit.

⁶ A CDC 128-A documents incidents of minor misconduct. (See Cal. Code Regs., tit. 15, § 3312, subd. (a)(2); *In re Gray*, *supra*, 151 Cal.App.4th at p. 389.)

⁷ At his parole hearing, Rosales said he was no longer working as a porter, and had most recently worked as a tutor. At that time, though, he did not have a job.

Rosales has also participated in numerous self-help and life skills programs. Notably, Rosales completed the Luboc Tutor Course, Breaking Barriers, Alternatives to Violence, Parenting, AA, NA, and Anger Management (twice). He also completed an Interfaith Relationship workshop. He has a certificate for participating in a music group, has tutored inmates in English, and received a second place award in softball in 1994.

D. Psychological Evaluations⁸ and Insight Into Offense

In the 2005 psychiatric evaluation, the psychologist's diagnostic impressions per the DSM-IV criteria were Axes I and II: no diagnosis; Axis III: no physical disorders or conditions; and Axis IV: stressors of incarceration. Rosales's GAF (Global Assessment of Functioning) score was 85 (on a 100-point scale).

Discussing the life crime, Rosales said: "When I hear about the crime I remember, I read the transcripts; I am now a different person! Before I was dumb, narrow-minded. I used to always justify my actions—I am not as bad as my friends. I don't smoke. I never used drugs or alcohol. That is how I used to justify the things that I did. I used to say I'm not that bad. I progressed from petty theft to vandalism to finally murder! I took someone's life. He could have been a father and a husband. I took it upon myself to kill that person. My intent was to crash the car. We were here to fight, never to hurt someone. This act led to killing someone! When I saw him slump down over the steering wheel I froze. I knew that I took the ultimate step, I couldn't justify this act! I

⁸ The American Psychiatric Association publishes the Diagnostic and Statistical Manual of Mental Disorders, Text Edition (4th ed. 2000) setting forth all currently recognized mental health disorders and a comprehensive classification system. Generally, the classification system calls for information to be organized into five "axes" or dimensions to assist clinicians in planning treatment and assessing prognosis: (1) clinical disorders, (2) personality disorders; (3) medical conditions; (4) psychosocial and environmental problems, and (5) global assessment of functioning (GAF). (*Id.* at p. 27.) Using a point scale from one hundred down to one and organized into 10-point descriptive ranges, e.g., 80–71, 50–41, or 20–11, GAF scoring reflects higher functioning in the higher numbers. (*Id.* at p. 33.) Although we refer to the DSM-IV criteria, we recognize that the 2000 text edition of the manual is the authoritative source.

didn't have an answer. My thinking back then was dumb and naïve. I felt that if someone did something wrong I had to show them how to do it. I thought I was the only one to do things the right way. My gang involvement polluted my school involvement. I was two months away from joining the [M]arines when this crime occurred. I worked with my stepdad and we became very close, but I always managed to kick back in the neighborhood during that time. I usually stayed in the background but I felt I needed to prove myself to the gang and myself, I wanted people to look up to me and to be validated! I felt I didn't fit in with my family and I wanted to fit in with this gang. I cared what other people thought. I was given a gun while I was in the car. I felt I was cool, I was accepted even though I never fired a gun before. I went to juvenile court in the past but always got probation. I figured I was smarter than them and I could get away with my actions. I thought I was smarter than the system. Now this has been progress, to look at the consequences of my actions, to look at the blame and know it was myself. I had and have potential but I waste so much of that potential in prison. I look at[:] do I want to continue this behavior? Do I want to hurt my family? Do I want to remain in prison? I don't want this for me! I don't want to continue to be this person. For the past six or so years I have learned how to deal with anger or a dislike for a particular person. I am only hurting myself."

The psychologist identified both "low risk" and "high risk" factors in an effort to "evaluat[e] the inmate for relapse and reoffense." On the high risk side, Rosales has a prior juvenile criminal record; he was an active participant in the offense; there was no immediate threat to him; the victim was highly vulnerable, and the offense was lethal, resulting in the victim's death.

The psychologist listed the low risk factors as well: "The inmate has no prior adult criminal record, no prior felony convictions and no prior misdemeanor convictions. He has no history of drug or alcohol abuse. Drugs/alcohol did not play a role in his offense. There is no record of aggression or violence in prison. Overall adaptation to prison life has been positive and constructive. The offense was not committed during the commission of another crime. The offense does not appear to be premeditated. The

inmate acknowledged he committed the offense. He fully acknowledged the wrongfulness of his actions. The inmate appears to take full responsibility for the offense and does not appear to rationalize or minimize his roles. He appeared to fully express remorse for his actions. When asked he shared extensive expressions of guilt or remorse. This inmate appears to feel guilty for his actions and can empathize at an emotional level with the harm done to the victim and the victim's family. This inmate demonstrated a good awareness of the circumstances that resulted in his committing a serious offense. This inmate appears to be highly motivated to undertake constructive changes in his life. The inmate is not diagnosed antisocial personality disorder. Criminal mindedness and criminality did not appear to be primary elements of the inmate's offense. Circumstantial/situational factors appeared to play a significant role in the offense."

The psychologist opined that "[w]ithin a controlled setting it appears that this inmate's propensity for violence is less than that of the average inmate, and compared to the average citizen in the community this inmate's violence potential would also be less." Further, "[t]here are no barriers to parole at this time from a mental health standpoint."

E. Parole Plans

Rosales plans to reside with his parents in Downey and has had good support from his entire family. He also has offers from his brother in Bellflower and a friend named Rosia Lopez, who lives in Baldwin Park, to live with them.

Rosales has a written offer from his stepfather, who is a foundry manager at Cudahy Molding and Casting. His brother offered to help him with a job in shipping and receiving at the Meridian IQ Company, Rancho Dominguez, where he works. He also has another job offer in a clothing manufacturing company in San Bernardino, on the loading dock. Ultimately, Rosales hopes to apply the trade he studied while in prison, graphic arts and printing.

In the psychologist's 2005 evaluation, Rosales's vocational plans were rated "excellent," his level of support and institutional adjustment were rated at 3 (good), and his prior work history was rated 1 (limited).

Letters of support came from Richard Islas (who offered Rosales the job at his clothing manufacturing company), friend Martha Sanchez, Rosia Lopez, his brother, his stepfather, and his older brother, Salvador Torres.

F. District Attorney's Position on Parole

The deputy district attorney opposed Rosales's release on parole.

G. Board's Decision

At the parole suitability hearing on March 1, 2007, the Board found Rosales unsuitable for parole and that he would pose an unreasonable risk of danger to society or a threat to public safety if released from prison. The Board relied primarily on the commitment offense itself, stating it was carried out in a callous manner, multiple victims were attacked, and the motive for the crime was very trivial in relation to the offense. The Board noted Rosales's minimal disciplinary history,⁹ the supportive psychological reports, and the "appropriate" parole plans, which had "strong family support." The Board noted the District Attorney's opposition to parole, but commended Rosales for his vocational education, continuing education, and self-help achievements. The Board recommended Rosales remain disciplinary free and continue his education. For self-help, it was suggested that he "obtain some books of some kind," read them, and "come back to the Panel with a short report, two or three paragraphs, indicating an understanding of what you read and how that has had an impact on you."

H. The Habeas Corpus Proceedings

Rosales filed a petition for writ of habeas corpus in August 2007 in Los Angeles County Superior Court. The Superior Court concluded the record contained "some evidence" to support the Board's finding that Rosales was unsuitable for parole. The court cited the fact that multiple victims were attacked, and the motive for the crime was

⁹ The Board did not state it relied on Rosales's disciplinary history as a basis for finding him unsuitable, only reciting the existence of a CDC 128-A and two CDC 115's, "the last of which was in December 2003."

inexplicable or very trivial in relation to the offense. The petition was denied on December 31, 2007.

Rosales timely filed his petition for writ of habeas corpus in this court on January 29, 2008. We issued an order to show cause and set a briefing schedule, but shortly thereafter stayed further proceedings pending the California Supreme Court's resolution of cases addressing the "some evidence" standard. After the Supreme Court filed opinions in *In re Lawrence* (2008) 44 Cal.4th 1181, and *In re Shaputis* (2008) 44 Cal.4th 1241, we vacated the stay and set a new briefing schedule. The matter is now ready for decision.

DISCUSSION

Rosales contends the Board's decision finding him unsuitable for parole denied him due process because it was not based on any evidence that he currently poses an unreasonable risk of danger to society if released on parole. We agree.

A. Governing Law

The purpose of parole is to help prisoners "reintegrate into society as constructive individuals as soon as they are able," without being confined for the full term of their sentence. (*Morrissey v. Brewer* (1972) 408 U.S. 471, 477 [92 S.Ct. 2593].) Although a prisoner has no constitutional or inherent right to be conditionally released before the expiration of his sentence (*Greenholtz v. Nebraska Penal Inmates* (1979) 442 U.S. 1, 7 [99 S.Ct. 2100]), in this state, Penal Code section 3041 creates in every inmate a cognizable liberty interest in parole, and that interest is protected by the procedural safeguards of the due process clause. (*In re Lawrence, supra*, 44 Cal.4th at p. 1205 ["petitioner is entitled to a constitutionally adequate and meaningful review of a parole decision, because an inmate's due process right 'cannot exist in any practical sense

without a remedy against its abrogation,”” quoting *In re Rosenkrantz* (2002) 29 Cal.4th 616, 664]; *Biggs v. Terhune* (9th Cir. 2003) 334 F.3d 910, 914–915.)¹⁰

Section 3041, subdivision (b) establishes a presumption that parole will be the rule, rather than the exception, providing that the Board “shall set a release date unless it determines that the gravity of the current convicted offense . . . is such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed.” (See *Board of Pardons v. Allen* (1987) 482 U.S. 369, 377–378 [107 S.Ct. 2415] [unless designated findings made, parole generally presumed to be available].) “[I]n light of the constitutional liberty interest at stake, judicial review must be sufficiently robust to reveal and remedy any evident deprivation of constitutional rights.” (*In re Lawrence, supra*, 44 Cal.4th at p. 1211; *Irons v. Carey* (9th Cir. 2007) 505 F.3d 846, 850 [section 3041 vests “California prisoners whose sentences provide for the possibility of parole with a constitutionally protected liberty interest in the receipt of a parole release date, a liberty interest that is protected by the procedural safeguards of the Due Process Clause”].)

When assessing whether a life prisoner will pose an unreasonable risk of danger to society if released from prison, the panel considers all relevant, reliable information available on a case-by-case basis. The regulations set forth a nonexclusive list of circumstances tending to show suitability or unsuitability for release. (Cal. Code Regs.,

¹⁰ All references to section 3041 are to that section of the Penal Code. Section 3041, subdivision (a), provides as relevant: “One year prior to the inmate’s minimum eligible parole release date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and shall normally set a parole release date as provided in Section 3041.5. . . . The release date shall be set in a manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public, and that will comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release dates. The board shall establish criteria for the setting of parole release dates and in doing so shall consider the number of victims of the crime for which the inmate was sentenced and other factors in mitigation or aggravation of the crime.”

tit. 15, § 2402, subds. (c) & (d).) Factors tending to indicate suitability include: (1) the absence of a juvenile record, (2) a stable social history, (3) signs of remorse, (4) significant life stress motivated the crime, (5) battered woman syndrome, (6) no significant history of violent crime, (7) the inmate's age, (8) realistic plans for the future, and (9) institutional behavior. (*Id.*, subd. (d).) Circumstances tending to show unsuitability include: (1) the commitment offense was committed “in an especially heinous, atrocious or cruel manner,”¹¹ (2) a previous record of violence, (3) an unstable social history, (4) sadistic sexual offenses, (5) psychological factors, and (6) serious misconduct while incarcerated. (*Id.*, subd. (c).) “In sum, the Penal Code and corresponding regulations establish that the fundamental consideration in parole decisions is public safety.” (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1205.)

The “core determination” thus “involves an assessment of an inmate’s *current* dangerousness.” (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1205, original italics.) The Board is authorized “to identify and weigh only the factors relevant to predicting ‘whether the inmate will be able to live in society without committing additional antisocial acts.’” (*Id.* at pp. 1205–1206, quoting *In re Rosenkrantz*, *supra*, 29 Cal.4th at p. 655.) “[D]irecting the Board to consider the statutory factors relevant to suitability, many of which relate to postconviction conduct and rehabilitation, the Legislature explicitly recognized that the inmate’s threat to public safety could be minimized over time by changes in attitude, acceptance of responsibility, and a commitment to living

¹¹ The regulation specifies the factors to be considered in determining whether the offense was committed “in an especially heinous, atrocious or cruel manner” as: “(A) Multiple victims were attacked, injured or killed in the same or separate incidents. [¶] (B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder. [¶] (C) The victim was abused, defiled or mutilated during or after the offense. [¶] (D) The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering. [¶] (E) The motive for the crime is inexplicable or very trivial in relation to the offense.” (Cal. Code Regs., tit. 15, § 2402, subd. (c)(1).)

within the strictures of the law.” (*In re Lawrence, supra*, 44 Cal.4th at p. 1219.) As a result, the “statutory and regulatory mandate to normally grant parole to life prisoners who have committed murder means that, particularly after these prisoners have served their suggested base terms, the underlying circumstances of the commitment offense alone rarely will provide a valid basis for denying parole when there is strong evidence of rehabilitation and no other evidence of current dangerousness.” (*Id.* at p. 1211.) The Board can, of course, rely on the aggravated circumstances of the commitment offense as a reason for finding an inmate unsuitable for parole; however, “the aggravated nature of the crime does not in and of itself provide some evidence of *current* dangerousness to the public unless the record also establishes that something in the prisoner’s pre- or post-incarceration history, or his or her current demeanor and mental state, indicates that the implications regarding the prisoner’s dangerousness that derive from his . . . commission of the commitment offense remain probative to the statutory determination of a continuing threat to public safety.” (*Id.* at p. 1214, original italics.)

B. Standard of Review

“[W]hen a court reviews a decision of the Board or the Governor, the relevant inquiry is whether some evidence supports the *decision* of the Board or the Governor that the inmate constitutes a current threat to public safety, and not merely whether some evidence confirms the existence of certain factual findings.” (*In re Lawrence, supra*, 44 Cal.4th at p. 1212, original italics.) The standard is “unquestionably deferential,” and “‘limited to ascertaining whether there is some evidence in the record that supports the [Board’s] decision.’” (*Id.* at p. 1210.) Nonetheless, the standard “certainly is not toothless, and ‘due consideration’ of the specified factors requires more than rote recitation of the relevant factors with no reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate decision—the determination of current dangerousness.” (*Ibid.*) Our inquiry thus is “not merely whether an inmate’s crime was especially callous, or shockingly vicious or lethal, but whether the identified facts are *probative* to the central issue of *current* dangerousness when considered in light of the full record before the Board. . . .” (*Id.* at p. 1221, original italics.) The Board or

Governor must articulate a “rational nexus” between the facts of the commitment offense and the inmate’s current threat to public safety. (*Id.* at pp. 1226–1227 [finding no evidence supported Governor’s determination that Lawrence remained a threat to public safety in view of her “extraordinary rehabilitative efforts specifically tailored to address the circumstances that led to her criminality, her insight into her past criminal behavior, her expressions of remorse, her realistic parole plans, the support of her family, and numerous institutional reports justifying parole, as well as the favorable discretionary decisions of the Board”].)

C. Analysis

As in *Lawrence*, the unsuitability decision here was based solely on the commitment offense. In 2007, the Board determined the commitment offense had been carried out in a callous manner, “there were multiple victims attacked and one was killed in the same incident.” Further, the offense was carried out in a calculated manner, and the motive for the crime was very trivial in relation to the offense.

Reliance on the aggravated circumstances of the commitment offense as a factor in finding an inmate unsuitable for parole is proper, but there must also be “something in the prisoner’s pre- or post-incarceration history or his or her current demeanor and mental state, indicat[ing] that the implications regarding the prisoner’s dangerousness that derive from his . . . commission of the commitment offense remain probative to the statutory determination of a continuing threat to public safety.” (*In re Lawrence, supra*, 44 Cal.4th at p. 1214.) Not only is that “something” missing from the Board’s 2007 decision, but the record establishes the contrary, that is, that nothing in Rosales’s pre- or post-incarceration history or his current demeanor and mental state support a prediction of current dangerousness.¹² The Board offered no reason why Rosales remains a public

¹² Contrary to respondent’s oral argument before this court, the Board did not state it relied on Rosales’s receipt of a CDC 115 in finding him unsuitable for parole. At no point did the Board articulate a nexus between Rosales’s choice of the *nonviolent* option of disobeying the order to leave his cell, which he knew would result in a rules

safety risk, 15 years after the commitment offense, let alone “establish[ed] a rational nexus between those factors and the necessary basis for the ultimate decision—the determination of current dangerousness.” (*Id.* at p. 1210.)

In a case such as this, “in which the record is replete with evidence establishing petitioner’s rehabilitation, insight, remorse, and psychological health, and devoid of any evidence supporting a finding that [he] continues to pose a threat to public safety—petitioner’s due process and statutory rights were violated by the [Board’s] reliance upon the immutable and unchangeable circumstances of [his] commitment offense” in denying him parole. (*Id.* at p. 1227.) We conclude that, just as in *Lawrence*, there was no evidence in the record to establish that Rosales’s parole currently poses a threat to public safety, and his rights were violated by the Board’s reliance solely upon the circumstances of his commitment offense as a proxy for the necessary evidence.

violation report, and a determination that Rosales posed a current risk of danger to public safety.

DISPOSITION

The petition for a writ of habeas corpus is granted, and the Board's decision is vacated. The Board is directed to find Rosales suitable for parole unless, within 30 days of the finality of this decision, the Board holds a parole suitability hearing and finds, based on new evidence, that he currently poses an unreasonable risk of danger to society if released on parole.

NOT TO BE PUBLISHED.

WEISBERG, J.*

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.